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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/037,964	12/21/2001	Keith Dirks	2206.66001	7478
7590	11/02/2004		EXAMINER	
GREER, BURNS & CRAIN, LTD. Suite 2500 300 South Wacker Drive Chicago, IL 60606			DEMILLE, DANTON D	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/037,964	DIRKS ET AL.
Examiner	Art Unit	
	Danton DeMille	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 05 August 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,3-5,7-15,17-19,22 and 23 is/are pending in the application.
4a) Of the above claim(s) 22 and 23 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,3-5 and 7-13 is/are rejected.

7) Claim(s) 14,15 and 17-19 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. **Claims 1, 3, 4, 5, 7-9, 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grossi et al. FR 1.057.283 in view of Fevas.**
2. Grossi teaches in figure 4, a housing including a gripping portion 1 and a body-contacting portion 11. The body contacting portion including a heated applicator pad 10 from heater 6 and a generally planar body-contacting portion. The housing being configured so that massage liquid is emitted from the body-contacting portion from reservoir 15 through apertured tube 17. A vibrator 3 is also taught. While the liquid would appear to flow under gravity from the reservoir through the apertured tube 17 there appears to be no unobviousness to apply a positive pressure within the reservoir to assist in forcing the liquid out of the reservoir. Some liquids such as creams and lotions are thick and need assistance in being forced out of an apertured tube. Fevas teaches a pump 21 to assist in moving the liquid out of the reservoir. It would have been obvious to one of ordinary skill in the art to modify Grossi to include a pump as taught by Fevas to assist the flow of liquid out of the reservoir.
3. Regarding claim 4, tube 17 has a plurality of apertures throughout its length including one that is near the outer periphery of the applicator pad.
4. Regarding claim 5, Grossi teaches a heating controller 9.
5. Regarding claim 7, Grossi teaches a controller 5 for the vibration generator however, using a conventional electric control element would have been an obvious provision to one of ordinary skill.

6. Regarding claim 8, it is well known to adjust the amount of vibration for any desired range dependent on practical considerations of intended use. The claimed range is not unobvious. It would have been obvious to one of ordinary skill in the art to further modify Grossi to use the frequencies claimed as desired dependent on the desired method of massage.

7. Regarding claim 9, using batteries and timers for operating the device is also well within the realm of the artisan of ordinary skill.

8. Regarding claims 11, 12, 13, cover 11 creates a pocket for the massaging enhancement pad/ applicator pad.

9. **Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Cheng '159.**

10. Cheng teaches rubber bolts 5 for isolating the gripping portion from the body contacting portion. It would have been obvious to one of ordinary skill in the art to further modify Grossi to use vibration isolating members as taught by Cheng to dampen the vibration of the vibrator from the gripping portion.

Allowable Subject Matter

11. Claims 14, 15, 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to claims 1, 3-5, 7-13 have been considered but are moot in view of the new ground(s) of rejection.

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13. Grossi teaches a housing having a gripping portion in the upper portion of the device and the housing has a body-contacting portion in the front of the applicator pad. Just as applicant's device has a separable portion for applying the lotion so does Grossi.

14. Just as applicant's body-contacting portion is configured for emitting heat directly to a target body surface so is the applicator pad of Grossi. The heating unit 6 of Grossi heats the top portion of pad 10 which is attached to the lower portion of pad 10 for directing heat to the body.

15. The only thing Grossi is missing is a pump to force the liquid out of the reservoir 15. Pumps for providing force to the liquid to force the liquid out of the reservoir is well known to an artisan of ordinary skill. There is no unobviousness to add a conventional pump to Grossi to force the liquid out of the reservoir. Thick lotions or creams require force to assist it out of the reservoir onto the body. Such would have been an obvious provision in Grossi.

ddd

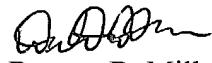
29 October, 2004

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